

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

GENARO CANO,

Plaintiff,

CIVIL No.1:11-CV-761

vs.

NEVADA GENERAL INSURANCE
COMPANY,

Defendant.

NOTICE OF REMOVAL

COMES NOW Defendant, Nevada General Insurance Company, pursuant to 28 U.S.C. §1446, 28 U.S.C. §1332, Fed R. Civ. Proc 81, and LR-CV 81.1, and files this Notice of Removal, removing this case from the Second Judicial District, County of Bernalillo, State of New Mexico, where the case was filed as Cause No. CV 2011-06937, and in support thereof states as follows:

1. On July 12, 2011, Plaintiff filed his “Complaint for Declaratory Judgment and for Damages for Insurance Bad Faith” in the Second Judicial District, County of Bernalillo, State of New Mexico, captioned and numbered, Genaro Cano v. Nevada General Insurance Company, No. CV-2011-0693. The Complaint was the first pleading served on Defendant in the state court action. Plaintiff served Defendant through the New Mexico Public Regulation Commission, and service was accepted on behalf of Defendant on July 28, 2011. *[True and correct copies of all documents and pleadings filed or served on Defendant in the state court action are attached hereto.]*

2. This Notice is filed within 30 days after Defendant was served with process (Summons and Complaint) and Removal is therefore timely.

3. This Court has jurisdiction pursuant to 28 U.S.C. §1332 and 28 U.S.C. §1446. As can be determined from Plaintiff's Complaint and exhibits attached hereto, the amount in controversy is at least \$75,000.00. Specifically, Plaintiff seeks to recover UM coverage equal to personal injury liability limits under the subject auto policy with NGIC. Plaintiff describes those limits as \$25,000 applicable to 3 vehicles, which would translate to \$75,000.00 in stacked UM coverage if the policy had UM coverage, because Plaintiff also alleges he is a named insured (a Class I insured to whom stacked coverage would apply). *See, Rehders v. Allstate Ins. Co.*, 2006 NMCA 58, 139 N.M. 536 (Named insureds are Class I insureds entitled to stack UM coverage.) In addition Plaintiff seeks punitive damages. Punitive damages may be included in the amount in controversy if, as here, they are awardable under applicable state law. *See, Watson v. Blankinship*, 20 F.3d 383, 386 (10th Cir.1994). Although Plaintiff has not alleged a precise amount of medical expenses, Plaintiff has alleged that he had a fractured arm and other injuries and damages as a result of the accident, including property damage to his Harley Davidson Motorcycle. (Complaint, ¶8.) This creates a reasonable expectation that Plaintiff will seek in excess of \$75,000.00 in total damages. Therefore, the amount in controversy requirement is met.

4. Jurisdiction is based on diversity of citizenship. Specifically, as shown by Plaintiff's Complaint, Plaintiff is a resident of the State of New Mexico, and Nevada General Insurance Company (NGIC) is a foreign insurance company. NGIC is a Nevada corporation with its principle place of business in the State of Nevada. Thus, NGIC is a citizen of the State of Nevada for purposes of diversity jurisdiction, and diversity jurisdiction is proper.

Respectfully submitted,

RUGGE, ROSALES & ASSOCIATES, P.C.

By: (electronically signed)

DALE R. RUGGE

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I HEREBY CERTIFY that on the 26th day
of August, 2011, I filed the foregoing

Notice of Removal
electronically through the CM/ECF system.

and that a true and correct copy of this pleading was mailed to:

Cloyd G. Hinkle/Cynthia A. Braun

Attorneys for Plaintiff

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(505) 883-4357

e-mail: cbraun@hinklelawoffices.com

on this 26th day of August, 2011.

(electronically signed)
DALE R. RUGGE